IN THE HIGH COURT OF JUDICATURE

DATED: 10.10.2006

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
and
THE HONOURABLE MR.JUSTICE M.THANIKACHALAM

Criminal Appeal No.1418 of 2004

Chandrasekaran .. Appellant

Vs.

State rep. by Inspector of Police
Kudavasal Police Station
Kudavasal, Nagapattinam. .. Respondent

Appeal under Section 374 of Crl.P.C against the judgment dated 5.11.2004 made in S.C.No.105 of 2004 on the file of learned Sessions Judge, Nagapattinam.

For Appellant : Mr.V. Gopinath, S.C.
For M/s. G.R.Swaminthan
For Respondent : Mr.N.R.Elango
Addl. Public Prosecutor

J U D G M E N T

(Delivered by P.D.DINAKARAN,J.)

The appellant stands convicted in Sessions Case No.105 of 2004 on the file of the Court of Sessions, Nagapattinam for an offence under section 302 IPC and sentenced to undergo life imprisonment and to pay a fine of Rs.2,000/-, in default, to undergo rigorous imprisonment for one year.

2. The prosecution set out its case as follows:

2.1. The deceased was given in marriage to the accused, appellant herein, 15 years prior to the date of occurrence. They had two sons out of their wedlock. There were frequent quarrels between the accused and the deceased, as the accused always used to give ear to his five sisters.

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2.2. On 17.5.2002 at 8.00 a.m., after making call to his sister, the accused asked the deceased to go out of the house. When the deceased refused, he pushed her and beat the children. The deceased requested the accused not to beat the children and pushed him. Then, the accused took the kerosene can, poured the kerosene on the deceased and set her on fire.

2.3. P.W.1 Karthikeyan and one Vignesh, both the sons of the accused and deceased, shouted on seeing the deceased in flames. Immediately, P.W.2 and P.W.3, who are neighbours, and other village people evacuated the deceased to the Kumbakonam Government Hospital.

2.4. P.W.9, Doctor treated the deceased in the hospital and issued Accident Register Extract, Ex.P14, opining that the deceased sustained 100% burn injuries.

2.5. On receiving telephonic requisition from the Kumbakonam Government Hospital at 3.00 pm, P.W.6, Judicial Magistrate proceeded to the Hospital and recorded the dying declaration of the deceased, Ex.P4 between 3.55 pm to 4.10 pm, in the presence of P.W.11 doctor who certified that the deceased was conscious when she gave the statement.

2.6. P.W.15, Sub Inspector of Police recorded the statement of the deceased, Ex.P18 on 18.5.2002 and registered a case in Crime No.207 of 2002 under Section 307, IPC. Ex.P19 is the printed F.I.R.

2.7. On the same day, P.W.16, Inspector of Police, undertook investigation, prepared Observation Mahazar, Ex.P1 and rough sketch, Ex.P20 and also seized M.O.1-White plastic can containing 1 litre of kerosene, M.O.2-Match box, M.O.3 and M.O.4-pieces of burnt dress materials under mahazar, Ex.P2 in the presence of P.W.4 and another witness. The statement of the deceased recorded by P.W.16 is Ex.P21. He arrested the accused on 19.5.2002 at 9.30 am in the presence of P.W.5 and another, recorded his statement and remanded him into judicial custody.

2.8. P.W.18, Inspector of Police, who succeeded P.W.16, on 29.5.2002, after receiving the death intimation issued by P.W.10, altered the case into one under Section 302 IPC, prepared Express FIR, Ex.P15 and forwarded the same to the Judicial Magistrate concerned through P.W.13, Head Constable. He conducted inquest over the dead body in the presence of Panchayatdars and prepared inquest report Ex.P22. He sent a requisition, Ex.P16 through P.W.14 to conduct post mortem.

2.9. P.W.12, Doctor conducted post mortem on 30.5.2002 and issued post mortem certificate, Ex.P17 opining that the deceased would appear to have died of septicemia, multi-organs failure due to extensive skin wound-burns, about 30-48 hours prior to post mortem.

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2.10. P.W.18 sent viscera, burnt skin and dress materials for chemical examination under requisitions Exs.P6 and P7, through Court. Exs.P10 and P13 are the pathological and viscera reports respectively.

2.11. P.W.17, who succeeded P.W.18, completed the investigation and filed a final report against the accused under Section 302 IPC on 28.3.2003.

2.12. As the accused denied the charges, he was tried in S.C.No.105 of 2004 on the file of learned Sessions Judge, Nagapattinam. In order to substantiate the charge levelled against the accused, the prosecution examined P.Ws.1 to 18 and marked Exs.P1 to P22 and M.Os.1 to 4, as already referred to above.

2.13. When the accused was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him in the evidence of prosecution witnesses, he denied the same as false. The accused neither examined any witness, nor marked any document.

3. The trial Court, appreciating the evidence on record, both oral and documentary, convicted and sentenced the accused as stated earlier. Exasperated by the judgment of conviction and sentence, the accused has preferred this appeal.

4.1. The principal ground of attack that has been made on behalf of the appellant is that when the deceased stated in the dying declaration, Ex.P4 that at the time of quarrel between herself and her husband/accused, he poured kerosene on her, pushed the children out of the house, lighted a cigar which wrongly fell on her saree and caught fire by accident, the trial court has erred in convicting the appellant solely on the basis of the evidence of P.W.1.

4.2. The learned senior counsel for the appellant/accused, to buttress the above submission, pointed out the contradiction in the evidence of P.W.1 wherein, in chief, he had stated that the accused poured kerosene on the deceased saying that he would get property on her death only and threw a lighted match stick on her and then sent him (P.W.1) and his younger brother out of the house and on hearing noise, himself and his brother went inside and saw their mother in flames, whereas he stated, in cross examination, that since the accused sent him and his younger brother out of the house and locked from inside the house, he was not aware of what happened inside the house.

4.3. Besides the above submission, the learned senior counsel contends that the conduct of the accused subsequent to the occurrence in taking the deceased to the hospital, in the light of Ex.P4 dying declaration, would belie the case of prosecution that the accused committed the offence. According to him, the accused would not have taken

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the deceased to the hospital, had he been responsible for the incident and the accused has been unjustifiably implicated in the crime.

5.1. Supporting the judgment of conviction and sentence by the trial Court, the learned Additional Public Prosecutor submitted that even though the accused took advantage of the statement made by the deceased in Ex.P4, dying declaration that when the accused lighted the cigar, it accidentally fell on her saree, the earlier portion of Ex.P4 dying declaration, wherein the deceased had stated that the accused took the kerosene can and poured kerosene on her subsequent to the quarrel between them and pushed P.W.1 and his younger brother out of the house and locked the house from inside would go to show that the match stick did not fall on the saree of the deceased accidentally, but it was thrown by the accused on the deceased.

5.2. The learned Additional Public Prosecutor, inviting our attention to the evidence of P.W.1, in chief, to the effect that there was a quarrel between the deceased and the accused with respect to property; the accused stating that he would get property on her death only, poured kerosene on her; threw the lighted match stick on her; pushed him and his brother out of the house; and he saw the deceased in flames, and in cross, that he was not aware as to what happened in the house as the accused locked the door from inside after pushing him and his brother out of the house subsequent to the quarrel, submitted that the evidence of P.W.1 proves that it is the accused who was inside the house at the time of occurrence and who poured kerosene and threw the lighted match stick on the deceased and the evidence of P.W.1 is supported by the evidence of P.Ws.2 and 3 and hence, the contradiction does not weigh much importance.

5.3. With respect to the other contention, the learned Additional Public Prosecutor submitted that though the deceased had stated in Ex.P4, dying declaration that the accused took her to the hospital in a car, yet, the evidence of P.Ws.2 and 3 would make it clear that it is not the accused, but they themselves who took the deceased to the hospital, which is supported by the evidence of P.W.1 and therefore, the defence that the accused was wrongly implicated in the case has to be rejected.

6. We have given our careful consideration to the submissions of the learned senior counsel for the appellant and the learned Additional Public Prosecutor and also perused the records.

7. The point for consideration in this appeal is whether the prosecution has brought home the guilt of the accused beyond reasonable doubt.

8.1. The accused is the husband and the deceased is the wife. Their marriage took place about 15 years prior to the date of occurrence. They had two children, P.W.1 Karthikeyan and Vignesh. It is deducible from the evidence of P.Ws.1 to 3 that there were quarrels between the husband and the wife with respect to the settlement of family property and on the date

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of occurrence also there was a quarrel between the both and in consequence of the quarrel alone the incident took place.

8.2. P.W.9 doctor admitted the deceased brought to the hospital with burn injuries on 17.5.2002 at 9.50 a.m. He has stated that the deceased suffered 100% burn injuries. P.W.10 doctor declared the deceased dead on 29.5.2002 at 1.45 p.m. and issued Ex.P15 accident register extract. P.W.12 is the doctor who conducted post mortem on the dead body of the deceased and found burn injuries all over the body except the head, the private part and foot. P.W.12 was of the opinion that the deceased would appear to have died of septicemia, multi-organs failure due to extensive skin wound burns, about 30 to 48 hours prior to the postmortem examination.

8.3. From the medical evidence, it is clear that the deceased was admitted with burn injuries and in spite of treatment, she died after 13 days due to septicemia and multi-organs failure caused due to burn injuries.

9.1. Regarding motive behind the occurrence, the prosecution sought the aid of P.Ws.1 to 3. P.W.1, son of the deceased in his evidence has stated that the deceased mother was asking the accused father to get the family property in his name and regarding the same, there were quarrels between the two. It is seen from his evidence that on the date of occurrence also, there was a quarrel between the both and in that, the accused told that only after her death, he would get the property and by saying so, he poured kerosene and threw a lighted match stick on her. P.W.1, in his cross examination also, has stated that his mother asked the accused father to get the family property which is in possession of P.W.1's aunts and that there were frequent quarrels between the father and the mother.

9.2. It is also deducible from the dying declaration, Ex.P4 that the father of the accused gave the jewels of the deceased to his daughters, that the accused used to give ear to his sisters and that on the date of occurrence, he asked the deceased to go out of the house.

9.3. P.W.2, a neighbour, in his evidence, has stated that there were frequent quarrels between the accused husband and the deceased wife regarding family property. P.W.3, also a neighbour, in his evidence has stated that since the father of accused gave all his money and things to his daughters, there were quarrels between the accused and the deceased.

9.4. It is not the case of the defence that there was no quarrel between the husband and the wife. The evidence of P.Ws.1 to 3 remain unshaken in this regard. We are, therefore, of the view that the prosecution has proved that there were frequent quarrels between the accused husband and the deceased wife.

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10.1. Now, let us consider the evidence of prosecution witnesses to link the accused with the crime. Out of 18 witnesses examined, P.Ws.1 to 3 alone speak about the occurrence. Others are official and mahazar witnesses. P.W.1 in his evidence has stated that the accused father poured kerosene and threw a lighted match stick on the deceased mother and that the accused father pushed him and his younger brother out of house. It is his further claim that after hearing noise, himself and his brother went inside and saw his mother burning. In his cross examination also, he has stated that his father pushed them out and bolted the door from inside and thereafter, he heard the noise of his mother.

10.2. P.Ws.2 and 3, independent witnesses, in their evidence have stated that on hearing noise, they rushed to the scene and saw the deceased in flames and put out the flames by placing a gunny bag on the deceased. It is their evidence that at that time, the accused came running out of the house. P.W.3 in his cross examination has stated that he saw the accused running out of the house. P.W.2 in his cross examination has denied the suggestion that he did not see the accused running out of the scene at the time of occurrence.

10.3. From the evidence of P.Ws.1 to 3 it is clear that the accused was present in the scene at the time of occurrence and when the deceased was raising alarm, he was inside the house and then only he left the scene, which was seen by the independent witnesses, P.Ws.2 and 3. P.W.1 in his cross examination has stated that his accused father was always keeping match box with him. According to P.Ws.2 and 3, they took the deceased in a car to the hospital.

10.4. The trial Court, though dealt with the evidence of P.Ws.1 to 3, mainly relied upon the dying declaration made by the deceased to the Judicial Magistrate,P.W.6, besides the dying declarations to P.W.9 doctor, P.W.15 Sub Inspector of Police and P.W.16 Inspector of Police. In Ex.P4 dying declaration before the Judicial Magistrate the deceased has stated that her husband poured kerosene on her and only to light a cigarette he took match box, but the flame fell on her accidentally and he did not expect what would happen.

10.5. Seeking aid of the above statement found in the dying declaration Ex.P4, the learned senior counsel appearing for the appellant/accused submitted that the occurrence is nothing but an accident. In support of his above submission, he referred the evidence of P.W.1 wherein he had stated that after pouring kerosene on the deceased, the accused pushed him (P.W.1) and his younger brother out of the house and thereafter, he heard the hue and cry of the deceased only.

10.6. It is true that the deceased in the dying declaration, Ex.P4 has stated that the accused took the match box only to light a cigarette and accidentally it fell on her saree. But, to test the veracity of the

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above statement in Ex.P4, we have to see the contemporaneous evidence in the form of dying declarations to P.W.9 doctor, P.W.15 Sub Inspector of Police and P.W.16 Inspector of Police, besides the evidence of P.Ws.1 to 3 among whom P.Ws.2 and 3 are independent witnesses.

10.7. P.W.9 doctor in his evidence has stated that he admitted the deceased with burn injuries in the hospital on 17.5.2002 at 9.50 a.m. and at that time, she informed him that her husband (accused) poured kerosene and set her on fire. He also found 100% burn injuries on her body.

10.8. P.W.6 Judicial Magistrate recorded Ex.P4 dying declaration on 17.5.2002 at 3.50 p.m. P.W.15, the Sub Inspector of Police recorded Ex.P18 statement of the deceased on 18.5.2002. In Ex.P18, the deceased has stated that the accused poured kerosene and lighted a match stick, but was prevented by her sons and so, the accused pushed her sons out of the house and bolted from inside and lighted a match stick and threw it on her and then, she raised alarm. Similarly, P.W.16 the Inspector of Police recorded Ex.P21 statement of the deceased on 18.5.2002 wherein it is stated that it is the accused who threw the lighted match stick on her.

10.9. As held by the Supreme Court in Shanti v. State of Haryana (2005) 12 SCC 287, when the case rests on two dying declarations and the said declarations are found to be absolutely coherent, cogent and inspiring confidence, there is nothing to discredit or disbelieve the same. In the instant case, the deceased in the statements before P.W.15 Sub Inspector of Police and P.W.16 Inspector of Police has stated that the accused poured kerosene and threw the lighted match stick on her, whereas in Ex.P4, the statement before P.W.6 the deceased has narrated that her husband poured kerosene on her and only to light a cigarette he took match box, but the flame fell on her accidentally and he did not expect what would happen. It is not in dispute that there is a slight variation in narrating the event in Ex. P4, but, it is to be seen that in all the statements, she has categorically stated that there was a quarrel and in that, the accused alone poured kerosene on her.

10.10. It is now relevant to refer to section 6 of the Indian Evidence Act, 1872 and Illustration (a) thereunder which read as under:

> "6. Relevancy of facts forming part of same transaction-- Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant whether they occurred at the same time and place or at different times and places.
>
> Illustration (a): A is accused of the murder of B by beating him. Whatever was said or done by A or by B or the bystanders at the beating, or so shortly before or after it as to form part of transaction is a relevant fact."

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In the light of section 6 of the Evidence Act, the facts which are connected with a fact in issue forming part of the same transaction are relevant to be considered. Now it is better to go through the evidence of prosecution witnesses in this regard.

10.11. P.W.1 in his evidence has stated that at the time of occurrence, the accused was inside the house along with the deceased. P.Ws.2 and 3, independent witnesses, have also stated that they saw the accused running out of the house immediately after the occurrence. Even though the deceased had stated in Ex.P4, dying declaration that the accused only lighted the cigar which wrongly fell on her saree, the evidence of P.W.1 would clearly prove that it is only the accused who was inside the house and who lighted the match stick and threw it on the deceased, inasmuch as the deceased herself has admitted in Ex.P4 itself that there was a preceding quarrel as a result of which the accused poured kerosene on her. P.Ws.2 and 3 have also stated that the deceased informed them that the accused set her on fire. The evidence of P.Ws.1 to 3 also derived support from P.W.9 Doctor who has deposed that the deceased had stated to him that the accused only set her on fire.

10.12. As already observed, P.W.15 Sub Inspector of Police also recorded Ex.P18 dying declaration in which the deceased had stated that it was the accused who set her on fire. On the other hand, the evidence of P.W.1 would clearly go to show that apart from P.W.1 and his younger brother, the accused alone was present at the time of occurrence. According to P.W.1, both P.W.1 and his younger brother were pushed out of the house by the accused. If the contention made on behalf of the accused based on the dying declaration Ex.P4 that even though he poured kerosene, he did not set the deceased on fire is accepted, there is no convincing explanation by the accused, who alone was present inside the house at the time of occurrence, for his omission, which according to us, undoubtedly an illegal omission to rescue the deceased. It is also relevant to note that there was no burn injury found on the clothes or body of the accused to justify his stand that even though he poured the kerosene, he did not set the deceased on fire.

10.13. Moreover, the accused, when he was questioned under section 313 Cr.P.C., simply denied the occurrence, while admitting that there was a quarrel with the deceased with regard to property. On scrutiny of the evidence of P.Ws.1 to 3, coupled with the statements of the deceased before P.Ws.6, 15 and 16, we hold that it is the accused who poured kerosene and threw lighted match stick on the deceased.

10.14. In this view of the matter, the judgment of the Apex Court in T.K.Reddy v. State of A.P.(2002) 7 SCC 96, wherein it is held that when the statement made before the Magistrate is contrary to the facts available on record, the conviction cannot be sustained, on which reliance was placed by the learned senior counsel for the appellant, is not helpful to the accused.

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11. In our view, the evidence of P.W.1 that subsequent to the quarrel, the accused poured kerosene on the deceased; pushed him and his younger brother out of the house; heard the hue and cry of the deceased; the accused came out of the house; thereafter, he saw the deceased with fire; and P.Ws.2 and 3 evacuated the deceased to the hospital in a private taxi, which is corroborated with the evidence of P.Ws.2 and 3, cannot be lightly disregarded, even though there is a contradiction, as pointed out by the learned senior counsel, in his cross examination that he was outside the house and was not aware as to what had happened inside the house, as it is only a minor discrepancy which cannot be termed to be fatal to the prosecution case, and does not materially affect the prosecution case.

12.1. The next submission of learned senior counsel for the accused that the conduct of the accused in taking the deceased to the hospital in a private taxi, as found in Ex.P4, would show that the accused is not responsible for the occurrence is liable to be rejected, in view of the evidence of P.Ws.1 to 3, which unambiguously confirm that the accused, immediately after the occurrence, ran out of the house and it is only P.Ws.2 and 3, who took the deceased to the hospital.

12.2. Though P.W.1 in his cross examination has stated that after admitting his deceased mother in the hospital, his accused father left, he also stated that he does not know who brought the car. From his evidence it is clear that immediately after the occurrence, P.Ws.2 and 3 visited the scene. It is their evidence that they took the deceased to the hospital. P.W.1 in his chief examination has stated that the villagers admitted his mother in the hospital. Therefore the statement of P.W.1 that his father admitted his mother in the hospital is only a minor discrepancy which cannot be termed to be fatal to the prosecution case.

We therefore hold that the prosecution has proved the guilt of the accused beyond all reasonable doubts and the trial Court was correct in convicting the accused for the offence under section 302 IPC and sentencing him to undergo life imprisonment. We find no reason to interfere.

In the result, the appeal stands dismissed and the conviction and sentence of the accused are confirmed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1.The Sessions Judge
Nagapattinam.

2. -Do-Thro' The Principal Sessions Judge,
Nagapattinam.

3. The District Collector,
Nagapattinam.

4. The Director General of Police,
Chennai.

5. The Public Prosecutor,
High Court, Madras.

6. The Superintendent,
Central Prison, Tiruchi.

7. The Inspector of Police,
Kudavasal Police Station,
Kudavasal, Nagapattinam.

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